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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Note by the Secretariat

Addendum

Note verbale dated 16 October 1992 addressed to the Centre for Human Rights by the Permanent Mission of Iraq to the United Nations Office at Geneva

1. The Permanent Mission of the Republic of Iraq to the United Nations Office at Geneva presents its compliments to the Centre for Human Rights, secretariat of the World Conference on Human Rights, and, with reference to General Assembly resolution 45/155 of 18 December 1990, paragraph 10 of the annex to Commission on Human Rights resolution 1991/30 of 5 March 1991, and General Assembly resolution 46/116 of 17 December 1991 relating to the World Conference on Human Rights, has the honour to submit the enclosed paper entitled "The right to development", prepared by Mr. Riyadh Aziz Hadi, President of the Iraqi Human Rights Association and member of the Advisory Committee on Human Rights of the Ministry of Foreign Affairs.

2. The Mission would be grateful if the Centre for Human Rights would regard this paper as a document of the Preparatory Committee. In this connection, it would like to stress that the ideas and views expressed therein reflect the personal opinion of Mr. Riyadh Aziz Hadi and are not necessarily binding on any other party.

Annex

THE RIGHT TO DEVELOPMENT

by Riyadh Aziz Hadi

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1. When the Rio Declaration proclaimed at the Earth Summit on 14 June 1992 referred to the right to development in the third of its 27 principles, this was an indication of the significant progress made in regard to that right, for which the peoples and countries of the third world have been struggling for many years. The Declaration on the Right to Development, which was proclaimed in General Assembly resolution 41/128 of 4 December 1986 (adopted by a majority of 146 votes), undoubtedly constitutes one of the principal achievements of the countries of the South during the 1980s. The proclamation of that Declaration by the General Assembly of the United Nations was not only an outstanding event but also a significant achievement for the General Assembly at its forty-first session, since the semi-unanimous support for the Declaration was a rare occurrence in United Nations deliberations. 1/

2. Although the proclamation of the Declaration on the Right to Development marked a new stage in the recognition of development as a right of peoples and individuals, it was also the fruit of international endeavours over a period of many years and one of the achievements of the third world which has succeeded, to a large extent, in stimulating worldwide awareness of the problems of backwardness, development and dependence from which the majority of mankind, namely the population of the third world, is still suffering.

3. Moreover, international recognition of the right to development substantially transformed the dimensions and concepts of the question of development since it embodies, within an effectively recognized international framework, the fact that development far transcends the concept of economic growth and, in fact, is a universal question with numerous dimensions of concern to every human being. The concept of development is no longer merely a question of economic growth or an increase in annual per capita income; it inherently comprises specific elements, namely human rights, which now constitute one of its essential dimensions. 2/

4. If we return to the roots of the concept of the right to development, we can say that it first appeared in 1972 when it was formulated by Mr. Keba Mbaye, President of the Supreme Court of Senegal who was concurrently a member of the International Court of Justice. He used it as the title of his opening address at the seminar of the International Institute of Human Rights at Strasbourg on the right to development as a human right. 3/

5. The United Nations has shown concern for this right as part of its concern at the obstacles that are preventing the realization of economic, social and cultural rights in the developing countries. Accordingly, in its resolution 4 (XXXIII) of 21 February 1977, the United Nations Commission on Human Rights decided to pay special attention to the consideration of the obstacles hindering the full realization of those rights, particularly in the

developing countries, as well as of the actions taken at the national and international levels to secure the enjoyment of those rights. The Commission on Human Rights recommended that the Economic and Social Council should invite the Secretary-General, in cooperation with UNESCO and the other competent specialized agencies, to undertake a study on the subject "The international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human needs". 4/

6. On the basis of a proposal by the countries of the third world, in January 1979 the Commission on Human Rights adopted a resolution which reaffirmed that the right to development was a human right and that all States and individuals were entitled to equal opportunities for development. It is noteworthy that, in the same year 1979, the General Assembly of the United Nations adopted a resolution, reflecting that viewpoint of the Commission on Human Rights, in favour of which more than 150 States voted. In 1980, the Commission on Human Rights once again adopted a resolution reaffirming its previous resolution. However, this time the vote was more unanimous since the majority voted in favour. 5/

7. As a result of the endeavours of the third world, the United Nations took a practical step in this field by forming a group of 15 experts appointed by the Chairman of the Commission on Human Rights from among candidates nominated by States, in accordance with the principle of equitable geographic distribution, to study the scope and contents of the right to development and the most effective means to ensure the realization, in all countries, of the economic, social and cultural rights enshrined in various international instruments, paying particular attention to the obstacles encountered by developing countries in their efforts to secure the enjoyment of human rights. 6/ This was done under the terms of Commission on Human Rights resolution 36 (XXXVII) of 11 March 1981. In accordance with the principle of equitable geographic distribution, nine members of the group of experts were from countries of the third world. This group of experts, in which I had the honour to represent Iraq throughout the period of its work at the European Office of the United Nations at Geneva from 1981 to 1989, was initially called upon to prepare a report on the scope and contents of the right to development and the most effective means to ensure the realization, in all countries, of the economic, social and cultural rights enshrined in various international instruments, paying particular attention to the obstacles encountered by developing countries in their efforts to ensure the enjoyment of human rights.

8. The Expert Group was requested to take into consideration, in particular, the observations of Governments and specialized organizations on this subject, as well as the report and the study prepared by the Secretary-General, the conclusions and recommendations of the Seminar on that subject and the conclusions and recommendations of the Special Rapporteur on the new international economic order and the promotion of human rights. 7/ In 1982, the Commission on Human Rights took a further and more important step by instructing the Expert Group to prepare a draft international declaration on the right to development, which was subsequently adopted by the General Assembly of the United Nations in 1986.

9. In addition to the endeavours made by the countries of the third world at the United Nations, we must also remember those made by the non-aligned countries in regard to the right to development. In this connection, the Sixth Summit Conference of the non-aligned countries, held at Havana in 1979, issued a final declaration which referred to "the right to development and to equal opportunity to obtain it, which is a prerogative both of nations and of individuals who constitute them". 8/ Further reference to the right to development continued to be made at subsequent non-aligned conferences. Mention must also be made of the role played by the experts from non-aligned countries in the Expert Group on the right to development, as well as the role played by third-world countries members of the Commission on Human Rights and the Economic and Social Council.

10. Numerous attempts have been made to define the right to development. In this connection, it is sufficient to refer to the novel definition formulated by Mr. Keba Mbaye, who regarded the right to development as a human right which raised the overall question of the quality of life of every human being and the need to improve it, taking into consideration the options and means of every individual and every nation. 9/ According to that definition, the right to development is therefore a fundamental right which embraces all human rights.

11. Attempts were made to define the right to development within the context of the work of the Expert Group on the right to development. The question was raised as to whether this right needed to be defined. Although all the members of the Group recognized the need to define the right to development, they also agreed that this would pose considerable problems. There was a general consensus among the experts from the various countries that it would be helpful and preferable, particularly at that stage, to identify the significance and constituents of the right to development, rather than attempting to define it. 10/ It might be asked whether the basis of the right to development is of a political, economic, strategic, legal or moral nature. The answer might be that the right to development, being a right that embraces all the human and peoples' rights recognized by the international community, includes the development of peoples, States and individuals and, consequently, its fundamental significance lies in an aspiration to justice at the national and international levels. The right to development is based on a combination of political, economic, strategic, legal and moral considerations. Since its aim is to enhance the lives of human beings, it obviously necessitates solidarity among persons and States and its basis must therefore be sought in numerous aspects of national and international life. It is rooted in the principles of justice and equality, respect for freedoms and rights, popular political participation in public life, promotion of the role of women and youth, and sovereignty over national resources. It is also rooted in the basic principles of international relations including, in particular, the Charter of the United Nations, the equal rights of peoples and the right of peoples to self-determination, equality of opportunity, sovereignty, territorial integrity, political independence, peaceful coexistence, non-interference in internal affairs and international cooperation on an equal footing, regardless of political, economic, social and cultural systems. 11/

12. The right to development has a collective as well as an individual dimension. This raises the question of who is entitled to this right and who

is responsible for ensuring its enjoyment. The question of whether the right to development is a right of individuals, peoples or States has proved more controversial than the question of who is responsible for ensuring the enjoyment of that right. Article 1 of the Declaration on the Right to Development, which was proclaimed by the General Assembly of the United Nations on 4 December 1986, stipulates that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development. 12/ However, that Declaration links the right to development to the full realization of the right of peoples to self-determination and emphasizes not only individual and collective responsibility in the field of development but also the duty of States to cooperate with each other to ensure development at the national and international levels and to eliminate the obstacles impeding such development.

13. This responsibility for the realization and full enjoyment of the right to development obviously depends on the resources and capabilities of the State concerned. This aspect should not be disregarded, particularly in the case of the countries of the third world which are encountering numerous problems in their quest for development. This raises the question of levels of responsibility for the realization of the right to development. Although the State bears primary responsibility, the international community must assume individual and collective responsibility if the State is unable to ensure enjoyment of the right to development due to its lack of resources. This interdependence between individuals and the State and between the State and the international community is an additional new characteristic of the right to development. 13/

14. While the right to development considers the human person as its focal point and not merely as one of its objects, since the Declaration on the Right to Development links this right to the full realization of human rights and fundamental freedoms, the overall development of peoples and States is also among the principal objectives of the right to development. The countries of the third world have obviously always accorded priority to the collective dimension of the right to development, which they regard as a right of peoples and States, in view of the nature of the problems of these States and the detrimental effects of the legacy of colonial policy on their right to self-determination and sovereignty over their national resources, at least during the present stage of their development. However, this in no way negates the interrelationship between the collective and individual dimensions of the right to development, since they ultimately converge in a single objective, namely the full realization of human development. Accordingly, the full realization of the collective and individual dimensions of the right to development must be pursued with the same level and degree of diligence. Enjoyment of the right to development also implies provision of the requisite means at the national and international levels due to the comprehensive nature of this right. In fact, the right to development implies the right of individuals, groups and peoples to freely participate in, contribute to and enjoy economic, social, cultural and political development with a view to the full realization of all human rights and freedoms. This includes the right to participate effectively in all aspects and stages of development and in all phases of the decision-making process, as well as the right to equality of access to resources, the right to equitable distribution of the benefits of

development, the right to respect for civil, political, economic, social and cultural rights, and the right to an international environment in which all these rights can be fully realized. 14/

15. In so far as development is basically a national endeavour which derives its principal source of strength from the peoples and nations concerned, the main factor therefore lies in this endeavour and the State concerned has a responsibility to ensure an appropriate national and international climate therefor. However, the principle of participation is particularly important for the realization of the right to development at the national level. This principle must be viewed as a means and not as an end in itself, since it includes participation by citizens in the making and implementation of decisions. "States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights" (Art. 8, para. 2, of the Declaration on the Right to Development). 15/

16. That means that, in this connection, participation is not confined to political life since it also includes other economic, cultural and social spheres of life, as well as full participation by women in national life. Participation constitutes a guarantee of the exercise of human rights and fundamental freedoms and equality of access of all persons to basic resources and services. This, in turn, signifies that citizens must be made aware of their rights and obligations and their participation in public life must be regulated in a careful and appropriate manner. At the international level, the right to development implies the creation of particular conditions and its realization depends on a number of factors, such as the elimination of the effects and legacy of colonial domination, the responsibility of the colonial Powers to compensate the peoples of the third world for the harm that they suffered during the colonial era, and also the elimination of the racist regimes in Palestine and South Africa and of all forms of inequality among States, aggression and interference in internal affairs. 16/

17. The third world regards the establishment of a new international economic order as a fundamental prerequisite for the realization of the right to development and as part of its demand for the democratization of international relations on a just and equitable basis. The present international economic order is totally incompatible with the development of the political and economic relations of the contemporary world and there is a close interlinkage between the prosperity of the developed countries and the development and advancement of the developing countries, since the prosperity of the entire international community depends on the prosperity of its component elements. The establishment of a new international economic order based on justice and equity therefore constitutes the appropriate framework for equality among States and peoples, since it is linked to realization of the right of peoples to self-determination, as well as their inalienable right to dispose of their natural resources. The right to self-determination can no longer be viewed solely from a political standpoint; it is increasingly being viewed from an economic, social and cultural standpoint. All the aspects and dimensions of development create a solid foundation for political independence and the first stage of this development is the permanent sovereignty of peoples and States over their natural resources. 17/

18. In the light of the above, we have no hesitation in saying that the right to development is a natural extension of a nation's right to self-determination since political independence can be consolidated only by economic independence. 18/ For the countries of the third world, the establishment of a new international economic order is still a factor in the furtherance of true economic independence and the development process. Although the Rio Declaration proclaimed at the Earth Summit on 14 June 1992 did not call for the establishment of a new international economic order, it recognized the fact that an open and appropriate international economic order was the only way to stimulate economic development everywhere. 19/

19. With regard to international cooperation, since the right to development will enable the peoples of the third world to achieve progress and prosperity, the international community, and particularly the most highly developed countries and international organizations, should provide those peoples with effective development assistance in view of the fact that effective international cooperation is essential in order to provide the developing countries with appropriate means and facilities to foster their comprehensive development, as indicated in article 4, paragraph 2, of the Declaration on the Right to Development. 20/ The Earth Summit also emphasized the principle of cooperation for development and the Rio Declaration stipulated that States and peoples must cooperate, in good faith and in a spirit of solidarity, to apply the principles set forth in the Declaration and to develop international law in such a way as to promote the achievement of sustainable development. 21/ We must understand that the provision of national and international means for the realization of the right to development is an integrated process in which no clear distinction can be drawn between national and international components. National endeavours for the realization of the right to development can succeed only in an appropriate international environment and no people or country can achieve proper development in isolation from others. 22/ However, this does not contradict our earlier affirmation that priority should be accorded to national endeavours, as indicated in the Declaration on the Right to Development, article 3, paragraph 1, of which stipulates that States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development. 23/

20. The obstacles hindering the realization of the right to development are of an international and local nature. However, a comprehensive and integrated view must be taken of these obstacles as a whole, due to the present interdependence of the national and international components of the problems or the appropriate solutions thereto. At the international level, the obstacles consist in the failure to respect the right of peoples to self-determination and sovereignty over their natural resources, as well as manifestations of racial discrimination and segregation, foreign occupation and domination, the problems impeding the financing and transfer of technology to the countries of the third world, environmental problems, the transfer of control over the resources of the developing countries to interests based in the developed countries (a trend which became increasingly prevalent in the 1980s) and the increasing burden of indebtedness. Moreover, the prevailing trade balances and monetary policies, as well as some of the preconditions for bilateral and multilateral aid and the undemocratic decision-making processes adopted by international economic, financial and

trade institutions, constitute obstacles to the right to development. There are also other factors of equal importance, such as the concentration of economic and political power in the major industrialized States under the new international circumstances. At the national level, the obstacles hampering realization of the right to development are illustrated by the illiteracy, disease, poverty and inadequate popular political participation in public life in the countries of the third world. Responsibility for the elimination of these obstacles must obviously be assumed either by other individual countries or by the international community as a whole within the framework of international cooperation and solidarity. However, the right to development cannot be realized without cooperation between individuals and the State, and between States and the international community, within tangible and carefully planned frameworks designed in such a way as to give practical effect to the purport of the right to development.

21. The countries of the third world should realize that, following its adoption by the General Assembly of the United Nations in 1986, the right to development became an acquired right that must not be relinquished, in spite of the far-reaching changes that have taken place in the world since 1989 and which have brought about a new international situation in which the concerns of the third world seem less important. However, the Earth Summit, which was held in a third-world country (Brazil) from 3 to 14 June 1992, gave the South and the countries of the third world another opportunity to play a new role on the international scene. 24/ The Rio Declaration proclaimed at the Earth Summit emphasized the need to accord priority to the special situation and needs of the developing countries, thereby strengthening the hope that the right to development will eventually be realized and that the third world will recover its brilliant international role under a new international order based on justice and equity.

Notes

1/ United Nations. 4/AC.39/1988. 22 January 1988, p. 2.

2/ Keba Mbaye. Le développement et les droits de l'homme. R.S.D., No. 22, 1977, pp. 33-35.

3 I.C.J. Development and the Rule of Law. Pergamon Press, Oxford, 1981, p. 100.

4/ United Nations, United Nations Action in the Field of Human Rights. Vol. I, New York, 1990, p. 436.

5/ I.C.J., op. cit., p. 148.

6/ United Nations. United Nations Action in the Field of Human Rights. Vol. I, op. cit., p. 437.

7/ Op. cit., p. 437.

8/ E.M.A. Nouvel ordre international et non-alignement. Paris, 1982, p. 269.

9/ Keba Mbaye, op. cit., p. 65.

10/ United Nations. E/CN.4/1489, 11 February 1982, p. 4.

11/ Ibid., p. 7.

12/ Th. van Boven. Démocratie, droits de l'homme et solidarité. Strasbourg, 1987, p. 7.

13/ I.C.J., op. cit., p. 147.

14/ United Nations. E/CN.4/1990/9/Rev.1, 26 September 1990, p. 46.

15/ United Nations. General Assembly. Declaration on the Right to Development. A/Res/41/128, 23 February 1987, New York, p. 46.

16/ United Nations, E/CN.4/1489, op. cit., p. 11.

17/ A. Cristescea. Le droit à l'autodetermination. E/CN.4/Sub.2/404/Rev.1, New York, 1981.

18/ United Nations. E/CN.4/AC.39/1988/L.3/Add.1, p. 3.

19/ United Nations. Rio Declaration. Earth Summit, 14 June 1992.

20/ United Nations. General Assembly. Declaration on the Right to Development, op.cit., p. 5.

21/ United Nations. Rio Declaration. Earth Summit, op. cit.

22/ Séminaire sur les effets de l'ordre économique international. ST/HR/SER.A/8, Geneva, p. 18.

23/ United Nations. General Assembly. Declaration on the Right to Development, op. cit., p. 5.

24/ Shu'eib Abdul Fattah. Earth Summit Conference (in Arabic). Al-Siyasa al-Duwaliya, No. 109, July 1992, Cairo, p. 171.